

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

Docket No. TSCA-08-2003-0003

In the Matter of:

Northwestern Corporation)	PENALTY COMPLAINT AND NOTICE OF
a/k/a North western Energy)	OPPORTUNITY FOR HEARING
40 East Broadway Street)	
Butte, MT 59701)	
)	
a Delaware Corporation,)	
Respondent.)	

JURISDICTION

1. This civil administrative enforcement action is authorized by Congress in section 16 (a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a). The United States Environmental Protection Agency (EPA) regulations governing polychlorinated biphenyls ("PCBs") authorized by the statute are set out in part 761 of title 40 of the Code of Federal Regulations (CFR) and violations of the regulations constitute violations of the section 15 of TSCA, 15 U.S.C. § 2614 . The rules for this proceeding are the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits ("Rules of Practice")," 40 CFR part 22, a copy of which is enclosed.

2. The undersigned EPA officials have been properly delegated the authority to issue this action.

3. EPA alleges that Respondent has violated section 15 of TSCA, 15 U.S.C. § 2614, and proposes the assessment of a civil penalty as more fully explained below.

NOTICE OF OPPORTUNITY FOR A HEARING

4. Respondent has the right to a public hearing before an administrative law judge to disagree with (1) any fact alleged by EPA in the complaint, or (2) the appropriateness of the proposed penalty.

5. To disagree with the complaint, and assert your right to a hearing, Respondent must file a written answer (and one copy) with the Regional Hearing Clerk , U. S. EPA, Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202-2466, within 30 days of receiving this Complaint. The answer must clearly admit, deny or explain the factual allegations of the

Complaint, the grounds for any defense, the facts you may dispute, and your specific request for a public hearing. Please see section 22.15 of the Rules of Practice for a complete description of what must be in your answer. **FAILURE TO FILE AN ANSWER AND REQUEST FOR HEARING WITHIN 30 DAYS MAY WAIVE RESPONDENT'S RIGHT TO DISAGREE WITH THE ALLEGATIONS OR PROPOSED PENALTY, AND RESULT IN A DEFAULT JUDGMENT AND ASSESSMENT OF THE PENALTY PROPOSED IN THE COMPLAINT.**

QUICK RESOLUTION

6. Respondent may resolve this proceeding at any time by paying the specific penalty proposed in the Complaint. Such payment need not contain any response to, or admission of, the allegations in the Complaint. Such payment constitutes a waiver of respondent's right to contest the allegations and to appeal the final order. See section 22.18 of the Rules of Practice for a full explanation of the quick resolution process. If Respondent chooses to resolve this proceeding by paying the specific penalty proposed in this Complaint, payment must be made, within thirty (30) calendar days of receipt of this complaint, by sending a certified or cashier's check payable to "Treasurer, United States of America," in care of:

U. S. EPA, Region 8
(Regional Hearing Clerk)
Mellon Bank
P. O. Box 360859M
Pittsburgh, PA 15251

A copy of the check must be mailed simultaneously to the attorney listed below.

SETTLEMENT NEGOTIATIONS

7. EPA encourages discussing whether cases can be settled through informal settlement conferences. If you want to pursue the possibility of settling this matter, or have any other questions, contact Brenda L. Morris at 1-800- 227-9441, extension 6891 or the address below. **Please note that calling the attorney or requesting a settlement conference does NOT delay the running of the 30 day period for filing an answer and requesting a hearing.**

GENERAL ALLEGATIONS

The following general allegations apply to each count of this Complaint:

8. Respondent is a corporation, incorporated in the State of Delaware, and doing business in the State of Montana.

9. Respondent is a "person" within the meaning of 40 CFR §761.3, and therefore subject to the requirements of TSCA and the regulations at 40 CFR part 761.

10. Respondent owns and operates a business located at 40 East Broadway Street, Butte, Montana (the “facility”).

11. The term “PCB-Contaminated Electrical Equipment,” defined at 40 CFR § 761.3, includes PCB transformers that contain 50 ppm or greater PCB, but less than 500 ppm PCB.

12. The term “PCB Items” defined at 40 CFR § 761.3, includes transformer bushings.

13. An authorized EPA inspector entered the facility with the consent of Respondent, on June 12, 2003, to inspect it for compliance with TSCA and the regulations at 40 CFR part 761.

14. At the time of the inspection, Respondent was storing PCB Items and PCB-Contaminated Electrical Equipment for disposal in its North and South Transformer shop areas.

COUNT 1

15. The PCB regulations require that PCB liquids be disposed of by the methods specified in 40 CFR § 761.60(a).

16. Pursuant to EPA’s PCB regulations at 40 CFR § 761.3, disposal includes spills, leaks, and other uncontrolled discharges of PCBs.

17. At the time of the inspection, there was a transformer (General Electric Serial No. 500236) in the North and South Transformer shop area that contained 956 gallons of dielectric fluid with a concentration of PCBs of 74 ppm which was leaking at the valve area and onto the body of the transformer near the oil tubes.

18. Respondent’s failure to properly dispose of PCBs from the leaking transformer as required by 40 CFR § 761.60(a) constitutes one violation of TSCA Section 15, 15 U.S.C. § 2614.

COUNT 2

19. The regulations at 40 CFR § 761.40 require any person who stores PCB items at concentrations of 50 ppm or greater for disposal, to mark the area where they are stored with the “CAUTION CONTAINS PCBs...” mark illustrated in figure 1 shown at 40 CFR § 761.45.

20. Respondent stored the transformer bushings with concentrations of PCBs greater than 500 ppm in the North and South Transformer shop area which did not have the entrance marked with the mark illustrated in 40 CFR 761.45.

21. Respondent’s failure to mark the entrance with the mark illustrated in 40 CFR § 761.45 is a violation of 40 CFR 761.40, and therefore a violation of section 15 of TSCA, 15 U.S.C. § 2614.

PROPOSED CIVIL PENALTY

22. Section 16 of TSCA, 15 U.S.C. § 2615, as amended, and the regulations promulgated under section 6 of TSCA, 15 U.S.C. § 2605, authorize the assessment of a civil penalty of up to \$27,500 per day of violation for each violation of TSCA. In arriving at the amount of the penalty proposed below, EPA, as required by Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(b), has taken into consideration, to the extent known at this time, the following factors: the nature, circumstances, extent and gravity of the violation, and with respect to respondent, the ability to pay, effect on ability to continue in business, any history of prior violations, degree of culpability, and such other matters as justice may require.

23. EPA has written a penalty policy entitled, Polychlorinated Biphenyls (PCB) Penalty Policy, dated April 9, 1990, that provides a rational, consistent and equitable method for applying these statutory factors to the facts and circumstances of specific cases. Using the policy to apply the statutory factors to the facts of this case, EPA proposes that a penalty of twenty five thousand dollars (\$25,000.00) be assessed against Respondent for the violations alleged above. The penalty policy, calculation, and narrative are enclosed and incorporated as attachment A to this Complaint.

24. The Administrative Law Judge is not bound by EPA's penalty policy or the penalty proposed by Complainant, and may assess a penalty above the proposed amount, up to the maximum amount authorized in the statute.

To discuss settlement or ask any questions you may have about this process, please contact Brenda L. Morris, Enforcement Attorney, at 1-800- 227-9441, extension 6891, or the address below.

**United States Environmental Protection Agency
Region 8, Office of Enforcement, Compliance and
Environmental Justice, Complainant
999 18th Street, Suite 500 (ENF-L)
Denver, CO 80202**

9/29/03

Date

SIGNED

David J. Janik
Supervisory Enforcement Attorney
Legal Enforcement Program

In the Matter of: Northwestern Energy
(Continued)

9/29/03
Date

SIGNED
Martin Hestmark, Director
Technical Enforcement Program

9/29/03
Date

SIGNED
Brenda L. Morris, Attorney
Legal Enforcement Program

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING, was hand-carried to the Regional Hearing Clerk, EPA, Region VIII, 999 18th Street, Denver, Colorado, and that a true copy of the same was sent via Certified Mail, addressed to:

Northwestern Energy
40 East Broadway Street
Butte, MT 59701

and

CT Corporation Systems, Registered Agent for
Northwestern Corporation
40 West Lawrence
Suite A
Helena, MT 59624

Date: 9/29/03 By: SIGNED
Judith McTernan, Secretary

IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS, PLEASE CONTACT THE REGIONAL HEARING CLERK.

THIS DOCUMENT WAS FILED IN THE RHC'S OFFICE ON SEPTEMBER 29, 2003